

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Verizon North Inc. and Verizon South Inc. :
:
Verified Petition for Waiver from 83 Ill. Adm. : 03-0094
Code Part 773.140(c), pursuant to 220 ILCS :
5/13-513. :

ORDER

By the Commission:

I. Procedural History

On February 10, 2003, as amended on February 11, 2003, Verizon North Inc. and Verizon South Inc. (collectively "Verizon") filed a Joint Verified Petition with the Illinois Commerce Commission ("Commission"), requesting a waiver of the customer notification requirements contained in 83 Ill. Admin. Code Part 773.140(c).

A Response to Verizon's Petition was filed by the Staff of the Commission ("Staff") on March 6, 2003. Also, Petitions to Intervene were filed by AT&T Communications of Illinois, Inc. ("AT&T") and WorldCom, Inc., on behalf of itself and its affiliate companies ("WorldCom").

Pursuant to notice as required by law and the rules and regulations of the Commission, a status hearing for this matter was held before duly authorized Administrative Law Judges ("ALJs") at the Commission's Chicago offices on March 6, 2003. At the status hearing, the Petitions to Intervene were granted, appearances were entered by counsel on behalf of all parties, including Staff, and a procedural schedule was set.

In accordance with the procedural schedule, Verizon filed the direct testimony of Ms. Karen H. Boswell on March 20, 2003. On April 18, 2003, AT&T submitted notice that it would not be filing testimony in this proceeding. On April 22, 2003, Staff filed the direct testimony of Mr. Jeffrey H. Hoagg. WorldCom did not file testimony. Verizon filed the rebuttal testimony of Ms. Boswell on May 6, 2003.

An evidentiary hearing was held on May 13, 2003, during which the testimonies of Verizon and Staff were admitted into the record. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken."

The parties agreed to waive Initial and Reply Briefs. On May 20, 2003, Verizon submitted a Proposed Order, which had previously been reviewed by Staff, and to which Staff did not object.

II. Verizon's Position

Verizon filed tariffs for two local service packages last year called Local Package and Local Package Plus. (Verizon Ex. 1.0, Boswell Dir., p. 10). These packages include a flat-rated access line, unlimited local directory assistance, and the customer's choice of CLASS or custom calling features. (*Id.*). In December 2002, Verizon also offered DSL, where available, at a discounted rate to its Local Package subscribers. (*Id.*). Verizon would now like to introduce a new package called "Freedom" that would cover every kind of direct-dialed domestic call a person can make, i.e., local, regional, and long-distance calling, at one package price. (*Id.*). Verizon states that in order to make this package available to customers in Illinois, it must have the flexibility to tell its customers about the package. (*Id.*).

However, it is Verizon's position that the customer notification requirements of 83 Ill. Admin. Code Part 773, specifically Section 773.140(c), prevent Verizon from proactively marketing its toll services and, thus, compromise Verizon's ability to roll-out its Freedom package, to the detriment of consumers. Accordingly, Verizon seeks a waiver of these customer notification requirements. Verizon offers several reasons why the Commission should grant its request for a waiver.

First, Verizon explains that the rule prevents consumers from receiving the benefits of new services packages. In particular, the rule prohibits Verizon from effectively rolling out a one-price package that includes unlimited toll. (*Id.*, p. 3). This is so because Verizon cannot tell customers about its own interexchange services until after customers are advised of their presubscription choices; and once a customer makes a selection, Verizon is prohibited from mentioning its own interexchange services. (*Id.*). Thus, Verizon avers that consumers are prevented from hearing about or purchasing very attractive services that many may find beneficial and desirable.

Second, Verizon explains that the rule prevents Verizon from proactively marketing its toll services, something that has been explicitly allowed under the Federal Communications Commission's ("FCC's") rules. (*Id.*, pp. 3-4). Verizon states that federal requirements simply dictate that customers be advised that they have a choice of long distance providers. Beyond that, local carriers are allowed to proactively market their own toll services, although they must also offer to read a list of other providers if customers are not sure which company they would like. (*Id.*, pp. 4-6). Thus, it is Verizon's position that the Illinois rule is more restrictive than, and inconsistent with, federal requirements.

Verizon also points out that most states now have customer notification requirements that are no more restrictive than the FCC requirements, with some

allowing even more freedom for a carrier to market its own interexchange services. In particular, of the states in which Verizon local service affiliates operate, the states of Alabama, Arizona, California, Connecticut, Florida, Hawaii, Idaho, Kentucky, Massachusetts, Michigan, Missouri, Nevada, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, West Virginia and Wisconsin as well as Washington D.C. require no more than the federal requirement. (*Id.*, p. 8). Verizon notes that only in the states of Delaware, Illinois, Maryland, Maine, New Hampshire, New Jersey, Rhode Island and Vermont are carriers prohibited from inbound marketing of their own services. (*Id.*).

Third, it is Verizon's opinion that the Illinois rule is anachronistic. Verizon explains that the current customer notification requirements in Part 773 were implemented during the 1980s in connection with the divestiture of AT&T and the beginning of competition in the long distance market. (*Id.*, p. 4). The rules were implemented to ensure that major local exchange carriers ("LECs"), which up to that time had been a part of AT&T, would provide equal access and nondiscriminatory interconnection to all of the new interexchange carrier entrants and would not favor AT&T. (*Id.*, pp. 6-7). Verizon states that the rules were not intended to restrict LECs from marketing their own toll services. (*Id.*, p. 7). Verizon further explains that the world today has changed significantly since the rules were introduced. Equal access has been ubiquitously available throughout the nation, and statewide throughout Illinois, for many years. Verizon states that it is common knowledge to consumers that they have a choice of long distance providers. (*Id.*, p. 8).

Fourth, it is Verizon's position that the restrictions of the rule are inconsistent with marketing mandates of other provisions of Illinois law and discriminatory. Verizon explains that Section 13-518 of the Public Utilities Act, 220 ILCS 5/13-518, mandates that certain telecommunications providers who are regulated under an alternative regulation plan, such as SBC Illinois, must offer packages of services that included unlimited intraLATA toll services. Section 773.140(c)'s restrictions are inconsistent with Section 13-518's requirement that carriers subject to alternative regulation offer package toll plans. Absent Section 13-518's statutory mandate, Section 773.140(c) could restrict companies subject to alternative regulation from proactively advising their customers of such package toll plans. (*Id.*, pp. 9-10). In any event, because Verizon is not subject to alternative regulation, the rule operates to discriminate against Verizon by preventing customers in Verizon's service area from benefiting from such packaged toll offerings. (*Id.*).

Finally, Verizon acknowledges that Staff recently completed a workshop process that addressed proposed changes to Part 773, including the customer notification requirements, and that it is anticipated the Commission will open a rulemaking to address these issues in the near future. (Ver. Ex. 1.0, Boswell Dir., p. 11). However, Verizon points out that the Commission rulemaking has not yet been commenced. Verizon also explains that the Commission will not be able to complete a rulemaking for at least a year from the date it begins, and notes that rulemakings commonly take between one and two years to complete. Accordingly, Verizon requests a waiver of the

customer notification requirements now in order to attain relief from the restrictions pending the Commission's completion of the rulemaking. (*Id.*).

Thus, it is Verizon's overall position that granting a waiver would not harm consumers or impede the development or operation of a competitive market. Rather, for the reasons Verizon advances, it is Verizon's opinion that the continued application of the requirements would have the opposite effect. (Ver. Petition, p. 6).

III. Staff's Position

Staff notes that the Commission has initiated a rulemaking to address Part 773, including the customer notification requirements. (Staff Ex. 1.0, Hoagg Dir., p. 4 (citing Initiating Order, *Illinois Commerce Commission on its own Motion: Amendment of 83 Ill. Admin. Code Part 773*, ICC Docket 03-0203 (issued Mar. 26, 2003)). Staff does not, at this point, concur in, object to or otherwise offer any opinion on the merits of Verizon's assertions. (*Id.*) Staff, however, does not object to the grant of the waiver sought by Verizon provided Verizon abides by the following customer notification requirements during the time that the waiver is in effect:

- (i) Verizon shall provide oral, written, or prerecorded information to its customers of the availability of presubscription. The information shall be provided in clear and neutral language, and shall describe presubscription, the option of presubscription, and how to unfreeze or change a PIC, and any related charges in a manner that does not attempt to influence customers regarding their selections.
- (ii) On an incoming call from a new customer requesting network access service, the Verizon representative shall inform the customer that they have a choice of long distance provider(s), and that different providers can be chosen for local toll (intraLATA) and long distance (interLATA) services.

(*Id.*, pp. 4-5). Also, in the event that the customer notification requirements contained in any proposed new Code Part 773 issued by the Commission differ from the contents of (i) and (ii) above, Verizon should be obligated to abide by the requirements contained in the Commission proposed new Code Part, pending its enactment and incorporation into the Illinois Administrative Code. (*Id.*, p. 5). Finally, Staff's decision not to advance an objection is conditioned on Verizon remaining obligated to abide by the requirements contained in any revised Final Code Part 773 promulgated by the Commission, at such time as that occurs. (*Id.*).

IV. Verizon's Reply

If granted a waiver, Verizon committed to abiding by the customer notification requirements set forth in the direct testimony of Staff witness Mr. Hoagg. (Ver. Ex. 2.0,

Boswell Reb., p. 1). Verizon also agreed to abide by the requirements contained in any revised Code Part 773 adopted by the Commission in Docket 03-0203. (*Id.*, p. 2).

V. Commission Analysis and Conclusion

Pursuant to Section 13-513 of the Public Utilities Act, 220 ILCS 5/13-513, the Commission may waive the application of any rule upon a showing that waiver will not harm consumers or impede the development or operation of a competitive market. We find that the several reasons advanced by Verizon, none of which were contradicted, in combination with Verizon's commitment to abide by the conditions set forth by Staff, satisfy the requisite demonstration. Therefore, we grant Verizon's request for a waiver of the customer notification requirements contained in 83 Ill. Admin. Code Section 773.140(c) subject to the conditions set forth by Staff as described herein.

VI. Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, and being fully advised in the premises, is of the opinion and finds that:

- (1) Verizon North Inc. and Verizon South Inc. are telecommunications carriers within the meaning of Section 13-202 of the Public Utilities Act, 220 ILCS 5/1-101 *et seq.*, which provide telecommunications services as defined in Section 13-203 of the Act;
- (2) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (3) the recitals of fact and conclusions thereon stated in the prefatory portions of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) Verizon North Inc. and Verizon South Inc. seek a waiver of the customer notification requirements of 83 Ill. Admin. Code Part 773.140(c);
- (5) Verizon North Inc. and Verizon South Inc. should be granted a waiver of 83 Ill. Admin. Code Section 773.140(c), as such a waiver will not harm consumers or impede the development or operation of a competitive market;
- (6) Verizon North Inc. and Verizon South Inc. should be required to comply with the conditions set forth by Staff as described in the prefatory portions of this Order during the period of time that the waiver is in effect;

- (7) Verizon North Inc. and Verizon South Inc. should be required to comply with the final Part 773 Rule when approved by the Commission in Docket 03-0203.

IT IS THEREFORE ORDERED that Verizon North Inc. and Verizon South Inc. are granted a waiver of 83 Ill. Admin. Code Section 773.140(c) as set forth in finding (5) above.

IT IS FURTHER ORDERED that Verizon North Inc. and Verizon South Inc. are required to comply with the conditions set forth by Staff as described in the prefatory portions of this Order during the period of time that the waiver is in effect.

IT IS FURTHER ORDERED that Verizon North Inc. and Verizon South Inc. are required to comply with the final Part 773 Rule when approved by the Commission in Docket 03-0203.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act, and 83 Ill. Admin. Code Section 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission, this 18th day of June, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman